IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-03-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

WRIT PETITION NO.2409 OF 2003

1. G. Duraikannu,
   S/o. Gurusamy

2. K. Venkatesan
   S/o. Kothandapani

3. M. Mathivanan,
   S/o. Murugesan .. Petitioners

Vs.

1. The Tamil Nadu Administrative Tribunal,
   Rep. by its Registrar,
   Addl. City Civil Court Buildings,
   Chennai 600 104.

2. The Revenue Divisional Officer,
   Chengalpattu.

3. Balu Mudaliar,
   Village Administrative Officer,
   Thandalam Village,
   Chengalpattu Taluk,
   Kancheepuram District.

4. Ramalingam
   Village Administrative Officer,
   Kolathur Village,
   Chengalpattu Taluk,
   Kancheepuram District.

5. Paneerselvam,
   Village Administrative Officer,
   Arambakkam Village,
   Chengalpattu Taluk,
   Kancheepuram District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent Tribunal in O.A.No.191 of

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2003 and quash the order dated 13-1-2003 passed therein and direct the second respondent not to decide the issue of nativity on the basis of place of working but to decide the issue on the basis of place of birth in so far as the postings of V.A.Os. are concerned.

For Petitioners : Mr.V. Ramasubramanian

For Respondent-2 : Mr.S. Gomathinayagam
Special Govt. Pleader

For Respondents 3&5 : Mr.K. Chandru
Senior Counsel for
Mr.AR.L. Sundaresan

For Respondent-4 : No Appearance

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J U D G M E N T

P.K. MISRA, J

The three petitioners have challenged the common order dated 13.1.2003 passed by the Tamil Nadu Administrative Tribunal in O.A.Nos.6539 of 2002 and 191 of 2003. O.A.NO.6539 of 2002 had been filed by the present petitioners 2 and 3 along with another person. O.A.No.191 of 2003 was filed by the present petitioners.

2. During pendency of the writ petition, the first petitioner has expired.

3. The facts giving rise to the present writ petition are as follows :-

Before 1995, Chengalpattu was a single unified district of which Saidapet was one Taluk. However, in 1995, Chengalpattu was bifurcated into Kancheepuram and Thiruvallur Districts and erstwhile Saidapet Taluk was bifurcated as Tambaram and Ambathur Taluks. The petitioners are all natives of Tambaram Taluk by birth. Respondent Nos.3 and 5 are natives of Pallipattu Taluk and Thittakudi Taluk in Tiruvallur and Cuddalore Districts and Respondent No.4 is native of Villupuram District by birth. The question relates to transfer and posting of various Village Administrative Officers. According to the petitioners, the question of posting and transfer of Village Administrative Officers is to be guided by G.O.Ms.No.864 dated 10-8-1992. As per the aforesaid G.O., the Village Administrative Officers are required to be posted in their native taluks and if sufficient posts are not available in their native taluks, such persons are to be posted in the nearby taluks. After bifurcation of Saidapet

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Taluk, the petitioners were posted in different taluks and not in Tambaram Taluk. In July, 2002, in course of general transfer, the second petitioner was transferred from Chembakkam to Nallambakkam and the third petitioner was transferred from Manamei to Arambakkam by order dated 19.7.2002. However, representations were filed by the petitioners indicating that they should have been posted in their native taluk of Tambaram as per G.O.Ms.No.864. Such representations were considered and the present second respondent issued fresh orders dated 25-7-2002 posting the second petitioner to Perumbakkam Village and third petitioner to Agaram Then Village in Tambaram Taluk. While the matter stood thus, the respondents 3 to 5 filed representation claiming that they should also be considered as natives of Tambaram Taluk as they had worked in such Taluk for more than five years and on the basis of such representation, the Commissioner for Revenue Administration sent letter dated 25.10.2002 indicating that the representation of the respondents 3 to 5 was justified on the basis of G.O.Ms.No.2388 dated 27.11.1990. On the basis of such recommendation, Respondent Nos.3 to 5 were posted in the places to which the petitioners had been posted. However, no order of posting had been issued to the petitioners at that stage. The petitioners 2 & 3 filed O.A.No.6539 of 2002 along with another Village Administrative Officer praying for a direction to the respondents not to consider the question of nativity on the basis of place of continuous work, but to consider the question of nativity on the basis of place of birth. However, since the order dated 24.12.2002, transferring the respondents 3 to 5 to the villages wherein the petitioners had been posted, had been passed, fresh O.A.No.191 of 2003 has been filed by the present petitioners. When such matter came up for admission on 13.1.2003, the Tribunal dismissed the said O.A., along with O.A.No.6539 of 2002. The present writ petition is directed against the aforesaid order.

4. In the said order, the Tribunal did not decide the question as to the meaning of the expression "native" and disposed of the matter with the general observation that ordinarily an order of transfer is not liable to be challenged in the Court of law. The Tribunal also gave direction to the Government to consider the applicants for accommodating them in the Tambaram Taluk and, if they cannot be so accommodated for want of vacancy, they can be posted to nearer Taluk.

5. In the present writ petition, the main contention of the petitioners is to the effect that since as per G.O.Ms.No.864 dated 10.8.1992 posting is to be effected on the basis of nativity of the concerned Village Administrative Officer, the official respondent should not have posted Respondents 3 to 5 in Tambaram Taluk, as Respondent Nos. 3 to 5 are native persons of other Taluks by birth. Their contention is to the effect that the question of nativity is to be decided on the basis of place of birth and not on the basis of place of residence.

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6. The contention of the respondents 3 and 5 is to the effect that the question as to whether a particular person is a native of particular taluk or not should not be decided merely on the basis of place of birth and such question has to be decided by taking into account the permanent place of residence and even if a person is not a native of particular place by birth, he can so become by virtue of his permanent residence in such place. It is also contended by them that posting of transfer is a matter of administrative expediency and the Courts of law should not interfere with such transfer.

7. In the present case, after the writ petition was filed, an order of stay had been passed and subsequently, the application filed by the Government to vacate the order of stay was also rejected. It is thus evident that the petitioners 2 and 3 continue in the place of posting as per the transfer order dated 25-7-2002 and such petitioners are about to complete three years in such place of posting.

8. It is not disputed by the petitioners or the counsel for the Government that G.O.Ms.No.864 dated 10.8.1992, which has been purportedly issued as an order of the Governor, lays down a general principle relating to posting and transfer of Village Administrative Officers. Even though such an administrative instruction may not have the statutory force of law, in the absence of any statutory provisions, such instruction is ordinarily expected to be followed in the matter of posting and transfer.

9. Respondents 3 and 5 have placed reliance upon the instructions issued by letter dated 27.11.1990 regarding issuance of nativity certificate. Such instructions, even though issued by the Revenue Department, relates to the question of issuance of nativity certificate to the students for the purpose of continuance of education. The purpose for which such instructions have been issued are entirely different. Such instructions obviously cannot be considered for the purpose of finding out the meaning of "native".

10. As per Concise Oxford Dictionary, the expression "native" means a person born in a specified place or associated with a place by birth. As per the Law Lexicon of P. Ramanatha Iyer (2004-Reprint), same meaning of the expression "native" is available, particularly, in Section 2(d) of the Indian Succession Act.

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11. It has been observed in AIR 1968 SC 1012(MINOR P. RAJENDRAN v. STATE OF MADRAS AND OTHERS) by the Supreme Court as follows:-

> "(9) .... What exactly "nativity" means is not clear from the rules; it may be the place from where the candidate passed his S.S.L.C. Examination; it may be the place where his father was born or his mother was born; it may be the place where his father has property or his mother has property; or it maybe the place of permanent residence of the parents or guardian, for the words "permanent residence" appear in the form of nativity certificate. But the dictionary meaning of the word "nativity" is birth and when the Rules provide for nativity certificate they really mean the place of birth. However, it appears that the place of birth of the candidate is nowhere mentioned in the Rules. Even though there may be some substance in the charge that all this complicated and confusing method has been provided in order to get over the prohibition in Article 15(1) by a camouflage, we cannot say that there is a clear violation of Article 15(1) for the district which the candidate may claim does not depend upon the place of his birth. We cannot therefore strike down R.8 on the ground that it discriminates on the basis of place of birth of the candidate concerned."

12. However, the fact that a person who has become a permanent domicile or resident of a particular place cannot be lost sight of while considering the question of meaning of "native" in the context of the present G.O. Obviously a person is native of a particular area by birth. However, whether any other person can also be considered as "native" of such place by virtue of migration or permanent residency would depend upon the facts and circumstances of a particular case. It is neither desirable nor proper to lay down as a general rule that a person on completion of particular years of residency can also be considered as "native" of that place.

13. In the present case, as already indicated, the present petitioners have continued by virtue of stay for about three years. Similarly the respondents 3 & 5 have also continued. As per G.O.Ms.No.864 dated 10.8.1992, the question relating to transfer of all the Village Administrative Officers should be considered in the light of the observations made. Since the petitioners are admittedly natives of Tambaram Taluk, efforts should be made to retain them within such Taluk as far as practicable. If the concerned authorities come to the conclusion that the respondents 3 to 5 can also be considered as "natives" of Tambaram Taluk, to that extent, their case for being posted in the Tambaram Taluk are required to be considered.

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14. The writ petition is accordingly disposed of, subject to the aforesaid observations. No costs.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
   The Tamil Nadu Administrative Tribunal,
   Addl. City Civil Court Buildings,
   Chennai 600 104.

2. The Revenue Divisional Officer,
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3. The Village Administrative Officer,
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Kolathur village, Chengalpattu
Taluk, Kancheepuram District.

5. The Village Administrative Officer,
Arambakkam Village,
Chengalpattu Taluk, Kancheepuram District.

+ 1 cc to the Government Pleader SR No.14355

+ 1 cc to Mr. V. Ramasubramanian, Advocate SR 14409

+ 1 cc to Mr.AR.L. Sundaresan, Advocate SR 14427

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